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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,735	11/13/2001	James Bradford Copelan		8937

7390 . 06/18/2004

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EXAMINER

BECKER, DREW E

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,735

Applicant(s)

COPELAN, JAMES BRADFORD

Examiner

Drew E Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6, 8 and 17-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6, 8 and 17-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of group II in the reply filed on October 23, 2003 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Specification

2. The abstract of the disclosure is objected to because it exceeds 150 words in length. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over d'Arbelles [Pat. No. 6,286,682].

d'Arbelles teaches a method comprising the steps of obtaining a alerting label with adhesive or a temporary alerting tattoo, and placing the alerting symbol on the user's body (column 3, lines 10-23; column 4, line 40). It would have been obvious to one of ordinary skill in the art to place the alerting symbol on the user's hand since d'Arbelles

already teaches placing the symbol anywhere on the body which is appropriate (column 4, line 40) and since the hand is a readily visible area. The recitation "for assisting a person in adhering to a healthy diet" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

5. Claims 17-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over d'Arbelles as applied above, in view of DE 4332471A1.

d'Arbelles teaches the above mentioned concepts. D'Arbelles does not recite placing a label on a food container. DE 4332471A1 teaches a method of informing a user by placing labels on a food container wherein the labels convey advantages and risks of the particular food (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the food container labels of DE 4332471A1 into the invention of d'Arbelles since both are directed to methods of conveying information with labels, since d'Arbelles already included using the labels to convey information such as a diabetic condition (column 3, line 52), since medical conditions such as diabetes required a specific type of diet, and since the labels of DE 4332437A1 would have provided a simple and convenient means of informing the user to the risks and benefits of a particular food item.

6. Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over d'Arbelles, in view of DE 4332437A1, as applied above, and further in view of Childress [Pat. No. 6,119,862].

d'Arbelles and DE 4332437A1 teach the above mentioned concepts. D'Arbelles and DE 4332437A1 do not recite a partitioned bowl. Childress teaches a method of eating from a partitioned bowl (Figure 9). It would have been obvious to one of ordinary skill in the art to incorporate the partitioned bowl of Childress into the invention of d'Arbelles, in view of DE 4332437A1, since d'Arbelles already included a partitioned kit (Figure 2), since DE 4332437A1 already included food containers, and since the partitioned bowl of Childress would have prevented the foods from mixing while also providing the consumer with a means to pick and choose the appropriate food items.


7. Claims 31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over d'Arbelles, in view of DE 4332471A, as applied above, and further in view of Hettinger [Pat. No. 5,388,043].

d'Arbelles and DE 4332437A1 teach the above mentioned concepts. D'Arbelles and DE 4332437A1 do not recite applying a symbol to a chart. Hettinger teaches a method of controlling one's diet by applying symbols to a chart (Figure 7). It would have been obvious to one of ordinary skill in the art to incorporate the chart of Hettinger into the invention of d'Arbelles, in view of DE 4332471A1, since d'Arbelles already included labels which conveyed information related to one's health, since DE 4332471A1 already included labels for food containers, and since the chart of Hettinger would have provided a convenient means of tracking one's long term diet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Drew E Becker
Primary Examiner
Art Unit 1761

6-17-04